IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6420 of 1993
With
SPECIAL CIVIL APPLICATION No. 6424 of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CHHANABHAI G KOLI PATEL - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR SB SUTHAR for Petitioners
MR LR PUJARI, AGP for Respondent(s) : 1,
None for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 25/01/2007

COMMON ORAL JUDGMENT

1. Shri S.B. Suthar, learned counsel for the

petitioners, Shri L.R. Pujari, learned AGP for the respondent State. None for the respondent no.2 though served.

2. The dispute appears to be in narrow compass. Respondent no.2 Society obtained certain land from the State Government and also joined people as its members. The land which was allotted to the Society was allotted by the Society to its members for purposes of cultivation and grazing their cattle. The petitioners were also allotted some land for the said purpose. The petitioners, it appears that because of some dispute between the Society and each member of the Society, were expelled from the membership of the Society. After expelling the petitioners, the Society filed two Civil Suits before the Civil Court, wherein, ultimately it was observed by the Civil Court that the Society would be entitled to crops raised on the said land after making payment of money to each of the petitioners. Thereafter, the suits were withdrawn. In view of the tentative finding recorded by the Civil Court that each of the petitioners was in possession of the property and has raised crops, the petitioners made applications for recording an entry in their favour that they are in possession of the property and have

acquired rights over the land. Ultimately, entries were made by the officer and were confirmed by the Mamlatdar in favour of the petitioners. The said entries came to be considered by the Mamlatdar, who, after hearing the parties confirmed the said entries. The Society being aggrieved by the said order passed by the Mamlatdar, preferred an appeal to the Deputy Collector who allowed the same holding that the plaintiffs were in possession of the property as members and as their membership has been terminated, they have no rights in the property and the entries could not be made in their favour. The said order was challenged before the Collector and before the Tribunal, but as the said proceedings proved futile, the petitioners are before this Court.

3. Shri Suthar, learned counsel for each of the petitioners submits that the question relating to their expulsion from membership has been challenged by each of the petitioners before the Competent Authority/Forum, therefore, no orders could be made against the interest of the petitioners. His submission is that the entries which were made by the officer and confirmed by the Mamlatdar could not be set aside only on the ground that the petitioners

did not continue to be the members of the said Society.

4. Shri Pujari, learned AGP for the respondent State on the other hand submitted that the petitioners could not make an application to the Competent Officer for making an entry, because so long as the question of expulsion from membership is concerned is not finally decided and as the rights of the petitioners are not finally decided, nothing could be carved out in favour of the petitioners.

5. After hearing the parties, I must hold that the petitioners could not be allowed to take advantage of the suits and withdrawal of the same because question of expulsion from membership on the date of the filing of the petition so also on the date of the entries and their certification were pending consideration. If the petitioners' representation cum proceedings relating to expulsion from membership culminate in their favour, then they would be entitled to hold possession as members, but if the proceedings are terminated against them, then they would have no right either to remain in possession or get an entry in their favour. Under the circumstances, I hold that the authorities were justified in setting aside the entries made in

favour of the petitioners.

6. Both the petitions are dismissed. Rule is discharged in each of the petition. No costs. Interim relief, if any, is vacated.

7. I however make it clear that in case the petitioners' proceedings where they have challenged their expulsion from membership are terminated in their favour, then they would be entitled to take appropriate proceedings.

[R.S. GARG, J.]

pirzada/-